

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

JOHN DOE
Plaintiff,

v.

BRIAN SPENCER and
FICTITIOUS PERSONS 1-10
Defendants.

CIVIL ACTION NO. 1:23-cv-00002
DISTRICT JUDGE CAMPBELL
MAGISTRATE JUDGE HOLMES
JURY TRIAL DEMANDED

APPLICATION TO CLERK FOR ENTRY OF DEFAULT
AND SUPPORTING UNSWORN DECLARATION

COMES NOW, Matthew D. Wilson, attorney for the Plaintiff, who requests that the Clerk enter the default of the Defendant, BRIAN SPENCER, pursuant to Fed. R. of Civ. Proc. 55(a). In support thereof, the undersigned counsel affirms the following under oath:

UNSWORN DECLARATION
PURSUANT TO 28 U. S. C. § 1746

1. That I, Matthew Wilson, am over the age of eighteen years and competent to testify as to the facts contained in this declaration.
2. That I am an attorney who is duly licensed by the States of Mississippi and Tennessee and am duly admitted to practice before this Court.
3. That I am counsel for the Plaintiff in the above styled and numbered matter.

4. That the aforesaid Defendant was served with process in this matter pursuant to Fed. R. of Civ. Proc. 4(c). Specifically, on January 13, 2023, copies of the Summons and Complaint were personally served upon Brian Spencer. A copy of the return has been filed with the Clerk. (Document No. 13.)

5. That Defendant responded to the Complaint by filing motions to dismiss on February 9, 2023. (Documents No. 28-31.)

6. That the District Judge denied the Defendant's motions to dismiss on March 4, 2024. (Document No. 54.)

7. That the Magistrate Judge ordered Defendant to file an answer to the Complaint by April 1, 2024. (Document No. 56.) Therein, the Magistrate Judge cautioned the Defendant "that failure to file an answer as directed may result in entry of judgment against him." (Id.)

8. That the Defendant filed a Notice of Appeal to the United States Court of Appeals for the Sixth Circuit on March 19, 2024, seeking to reverse the District Judge's March 4, 2024, order. (Document No. 57.) Defendant did not seek leave of court to file this appeal as required by Fed. R. of App. Proc. 5 (1) ("To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition with the circuit clerk and serve it on all other parties to the district-court action.") Moreover, no stay has been entered by the District Judge or any judge of the Court of Appeals pursuant to 28 U.S.C. § 1292 (b) ("... That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.")

9. That Defendant moved this Court for a fourteen-day extension to file his answer on March 29, 2024. (Document No. 59.) Therein, Defendant requests “the court grant 14 days from today 03/29/2024 to submit the ordered paperwork.” (Id.) The Court granted this motion on May 1, 2024, stating, “**Defendant must file his answer by May 15, 2024. No further extension will be granted.**” (Document No. 68. Emphasis in Original.)

10. Upon information and belief, the pro-se Defendant has registered with the CM/ECF system. This is evidenced by how the Defendant had executed a certificate of service for an “Appellant’s Brief” (Document No. 60) on April 16, 2024, which was the same day the brief was filed on the CM/ECF system. The docket also has the Defendant’s email address, indicating that he has access to CM/ECF. Therefore, Defendant had the means to file an answer electronically as late as 11:59 p.m. CDT on May 15, 2024. As the docket would indicate, he has not. Instead, he has only filed a motion on May 8, 2024, seeking a refund of fees he has filed. (Document No. 70.)

11. That the Defendant has failed to plead or otherwise defend as set forth by the Court’s May 1, 2024, order.

12. That the Defendant is not a minor or an incompetent person.


13. That upon information and belief the Defendant is not in the military service. Pursuant to LR55.01, the undersigned has attempted to process a check of records at the Defense Manpower Data Center, specifically the Servicemen and Sailors Relief Act portal (<https://scra.dmdc.osd.mil/scra/#/home>), to ascertain if

Defendant is in the military, but the undersigned cannot access these records because Defendant's date of birth is a mandatory entry and the undersigned does not know Defendant's date of birth (or if it has been disclosed, the undersigned cannot recall it). However, as the docket would indicate, Defendant's email address is from "crowncastle.com," which is believed to be a civilian company. (See www.crowncastle.com.)

14. That this unsworn declaration is being executed in accordance with Fed.. R. of Civ. Proc. 55(a) to enable the Petitioner to seek a default judgment against the Defendant.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on May 16, 2024


Matthew Wilson

Prepared by:
Matthew Wilson (TN BPR 028175)
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CERTIFICATE OF SERVICE

I, Matthew Wilson, hereby certify that a true and exact copy of the foregoing was filed and served by operation of the Court's ECF/PACER system on this the 16th day of May 2024, upon

Brian Spencer
brian.spencer@crowncastle.com

JOHN DOE

/s/Matthew Wilson

BY: _____
Matthew Wilson (TN BPR 028175)

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